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REHEARING 1-29-99

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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner - Chairman

RENZ D. JENNINGS

Commissioner

CARL J. KUNASEK

Commissioner

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IN THE MATTER OF THE
COMPETITION IN THE PROVISION OF
ELECTRIC SERVICES THROUGHOUT
THE STATE OF ARIZONA.

DOCKET No. RE-00000-C-94-165

Arizona Corporation Commission

DOCKETED

DEC 31 1998

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**APPLICATION FOR REHEARING OF DECISION NO. 61272
SUBMITTED BY ASARCO INCORPORATED,
CYPRUS CLIMAX METALS COMPANY, ENRON CORP. AND
ARIZONANS FOR ELECTRIC CHOICE AND COMPETITION**

December 31, 1998

Submitted by:

FENNEMORE CRAIG

Attorneys for ASARCO Incorporated, Cyprus
Climax Metals Company, Enron Corp., and
Arizonans for Electric Choice and
Competition

1 Pursuant to A.R.S. § 40-253.A, ASARCO, Incorporated, Cyprus Climax Metals Company,
2 Enron Corp., and Arizonans for Electric Choice and Competition¹ (collectively referred to herein as
3 "AECC") hereby request a rehearing of Decision No. 61272 (December 11, 1998) (the "Decision")
4 which Decision adopted the Commission's most recent version of the Retail Electric Competition
5 Rules (A.A.C. R14-2-203, et seq. and R-14-2-1601, et seq.) (the "Rules"). AECC requests a
6 rehearing because the Decision fails to adopt rules which protect special contract customers,
7 mandate buy-throughs or provide for proper treatment of fixed must-run generation costs in
8 unbundled tariffs.

9 **A.A.C R14-2-1604 COMPETITIVE PHASES**

10 **Special Contracts**

11 Perhaps the most striking omission from the Rules is the lack of any specific reference to
12 "special contract" customers. These uniquely situated customers, generally the Affected Utilities'
13 largest customers, and some of the state's largest employers, are, apparently, to be left out of the
14 competitive marketplace if their contracts expire before all customers have access to competition.
15 This follows from the fact that the Rules provide customers with demand loads above 1 MW access
16 to competition during the transition period commencing January 1, 1999, but only on a "first-come,
17 first served" (terms which are not defined) basis up to 20% of the Affected Utilities' 1995 system
18 peak demand. See R14-2-1604.A. Although the utilities' special contract customers have demand
19 loads greater than 1 MW, many of them will not be "first-comers" because their contracts expire at
20 varying times after the January 1, 1999 introduction date for competition.

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23 ¹ Arizonans for Electric Choice and Competition is a coalition of companies and associations in favor of
24 competition and includes Cable Systems International, BHP Copper, Motorola, Chemical Lime, Intel,
25 Hughes, Honeywell, Allied Signal, Cyprus Climax Metals, Asarco, Phelps Dodge, Enron, Homebuilder's
26 of Central Arizona, Arizona Mining Industry Gets Our Support, Arizona Food Marketing Alliance,
Arizona Association of Industries, Arizona Multi-housing Association, Arizona Rock Products
Association, Arizona Restaurant Association, Arizona Association of General Contractors, and Arizona
Retailers Association.

1 Admittedly, at first glance, this may seem like an issue of "contract" to which these
2 customers have agreed to be bound and for which consideration was exchanged. However, that is a
3 deceptively narrow view fostered by Affected Utilities such as APS. At worst, APS asserts, these
4 customers may have to pay standard offer rates. What APS failed to point out, and what the
5 Decision ignores, is that those standard offer payments will result in huge profits for Affected
6 Utilities. Perhaps more importantly, forcing these large electric consumers to standard offer tariffs,
7 even for one to two years, will have devastating economic impacts on these customers, their
8 employees and the communities in which they reside. In fact, the difference between the rates paid
9 under special contracts and the standard offer rates could be millions of dollars annually. In certain
10 industries, such as Arizona's already depressed copper industry, such substantial increases in
11 operating expenses could result in the termination of operations and loss of jobs for Arizona
12 citizens as well as reduced revenue to local governments.

13 The rates for special contract customers help keep these customers on the Affected Utility's
14 system rather than having these customers self-generate. By remaining on the system and
15 purchasing enormous quantities of electric power, these special contract customers pay significant
16 portions of the utility's fixed costs lowering the rates paid by the rest of the utility's customers.
17 Adopting rules governing competition that fail to recognize the unique service characteristics of
18 special contract customers is also inequitable. For example, some special contract customers take
19 service at high voltage and own their own substations and distribution systems. These factors
20 reduce the utilities' costs of service and must be recognized in the Rules. In addition, many of
21 these special contracts have "interruptible" provisions that enable Affected Utilities to meet peak
22 demand of customers without constructing additional capacity.

23 Staff also opposed recognition of the unique circumstances of special contract customers in
24 the Rules. However, Staff has failed to offer any explanation for its opposition. See Staff's Reply
25 Comments Re: Decision No. 61071 dated October 2, 1998 at p.13.

26

1 In summary, recognition of special contract customers is not, as APS cries, "simply a crass
2 attempt by a handful of customers to 'butt into line' ahead of other customers." See Reply
3 Comments of Arizona Public Service Company dated October 2, 1998 at p. 2 Instead, it is the
4 equitable solution to the unique circumstances of customers who entered into long-term contracts
5 before the transition to competition started. For this reason, AECC respectfully requests that the
6 Commission substitute the revised language to R14-2-1604 set forth in Exhibit A hereto for the
7 language currently contained in the Rules. This language will ensure that special contract
8 customers have access to competitive generation services upon expiration of these contracts.

9 Buy-Through Service (R14-2-1604.G)

10 A.A.C. R14-2-1604.G provides that Affected Utilities "**may**" engage in buy-throughs with
11 consumers. Throughout the proceedings, AECC consistently maintained that the Commission must
12 amend the Rules to require that Affected Utilities provide for buy-through service. Notably,
13 Affected Utilities have always been allowed to provide buy-through services; however, none do.

14 Requiring Affected Utilities (or Load-Serving Entities) to allow for buy-through services
15 provides an important safety net for customers who have acted in reliance on the timely
16 introduction of full and open retail access to electric generation. In opposing mandatory buy-
17 through services, APS asserted that it was "at a complete loss to understand why this is an issue
18 except as a subtle attempt to allow by-pass of the Systems Benefits charge and any CTC." See
19 Reply Comments of Arizona Public Service Company dated October 2, 1998 at p.2. Ironically, the
20 introduction of competition has already been delayed and the road towards full competition for
21 electric generation services will continue to be fraught with pitfalls and delays and it is likely that
22 full access to competition may be further delayed. Buy-through services are necessary to protect
23 consumers from these delays. These services are not, as APS frivolously has alleged, an effort to
24 avoid payment of the CTC or other charges for transmission, distribution and related services. In

25

26

1 fact, the revisions repeatedly suggested by AECC expressly provide for payment of transmission,
2 distribution and related charges. See Exhibit A hereto.²

3 The Rules, as adopted in the Decision, are directly contrary to Arizona law regarding public
4 power entities. The Arizona Legislature, in enacting HB 2663, mandated that buy-through service
5 be provided by public power entities. See A.R.S. § 30-803.D. Moreover, in not requiring that
6 Affected Utilities, Utility Distribution Companies and Load-Serving Entities be required to offer
7 buy-through service, the Decision also ignores the Arizona Constitution. By the express terms of
8 the Arizona Constitution, the Affected Utilities are common carriers. Ariz. Const. Art. XV § 10.
9 When the Affected Utilities accepted CC&Ns from the Commission, as common carriers they
10 agreed to make their facilities, including their transmission and distribution lines, available to
11 other public service corporations (this would include certificated ESPs) whenever the
12 Commission determined it to be in the public interest. See A.R.S. § 40-332. The public interest
13 now demands, as reflected in the Rules, that there be competition in electric generation. In order
14 to ensure that consumers receive the benefits of competition, and that the Affected Utilities move
15 seriously towards competition, buy-through service must be mandatory.

16 **R14-2-1613 SERVICE QUALITY, CONSUMER PROTECTION, SAFETY AND BILLING**

17 **Must-Run Generation**

18 R14-2-1613.O sets forth the minimum cost elements to be separately identified in the
19 Affected Utilities' unbundled tariffs. AECC asserts that the Commission erred when it failed to
20 provide that fixed must-run generation costs also be identified as a separate line item in the utilities'
21 unbundled tariffs. Currently, the fixed costs associated with generation facilities that will provide
22 must-run generation service are included in bundled rates. However, in accordance with the

23
24 ² Staff also opposed the suggestion that Affected Utilities (or Load-Serving Entities) be obligated to
25 provide for buy-through services. The only rationale offered by Staff for opposing mandatory buy-
26 through was Staff's belief that these entities "should not be required to enter into buy-throughs."
See Staff's Reply Comments Re: Decision No. 61071 dated October 2, 1998 at p.16. Frankly,
AECC respectfully submits that Staff's belief is irrelevant.

1 must-run protocol developed by stakeholders in the AISA Operating Committee, and adopted by
2 the AISA Board for submittal to FERC, fixed must-run costs are to be billed to Scheduling
3 Coordinators in accordance with their relative share of monthly load in a given must-run zone.
4 Indeed, this proposal was made to the AISA Operating Committee by APS.

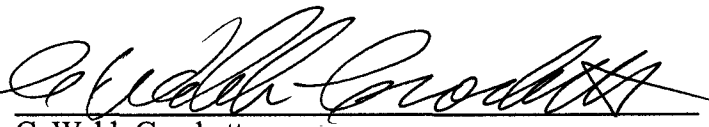
5 Customers residing in the must-run zone who purchase competitive power should not be
6 billed for this service so long as the cost was being billed to the customer's Scheduling
7 Coordinator, as planned. Customers who purchase competitive power and who do not reside in a
8 must-run zone would not be billed for this service at all. In any event, failure to separately
9 identify fixed must-run costs in unbundled tariffs will result in the utilities double-billing parties
10 for fixed must-run costs.

11 **CONCLUSION**

12 Based on the foregoing, AECC respectfully submits that the Rules must be amended to
13 provide for recognition of the unique circumstances of special contract customers, to mandate the
14 provision of buy-through services and to ensure proper recognition of fixed costs associated with
15 must-run generation in unbundled tariff filings.

16 RESPECTFULLY SUBMITTED this 31st day of December, 1998.

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1 **EXHIBIT A**

2 **R14-2-1604. Competitive Phases**

3 A. Each Affected Utility shall make available at least 20% of its 1995 system retail peak
4 demand for competitive generation supply as further described in this rule.

5 1. All Affected Utility customers with non-coincident peak demand loan of 1 MW or
6 greater will be eligible for competitive electric services no later than January 1,
7 1999. Customers meeting this requirement shall be eligible for competitive
8 services until 20% of the Affected Utility's 1995 system peak demand is served
9 by competition.

10 2. Affected Utility customers with single premise non-coincident peak loan demands
11 of 40 kW or greater aggregated into a combined loan of 1 MW or greater will be
12 eligible for competitive electric services no later than January 1, 1999. Self-
13 aggregation is also allowed pursuant to the minimum and combined load demands
14 set forth in this rule. If peak load data are not available, the 40 kW criterion can
15 be determined to be met if the customer's usage exceeded 16,500 kWh in any
16 month within the last 12 consecutive months. From January 1, 1999, through
17 December 31, 2000, aggregation of new competitive customers will be allowed
18 until such time as 20% of the Affected Utility's 1995 system peak demand is
19 served by competitors. At that point all additional aggregated customers must
20 wait until January 1, 2001 to obtain competitive service.

21 3. Notwithstanding the limitation to 20% of the Affected Utility's 1995 system peak
22 demand provided in paragraphs 1 and 2 of this section, effective January 1, 1999,
23 all loads served by Load Serving Entities under special contracts will be eligible
24 for competitive services upon the expiration of the special contract.

25 4 Affected Utilities shall notify customers eligible under this subsection of the terms
26 of the subsection no later than October 31, 1998.

EXHIBIT A

G. Load Serving entities shall provide for buy-through service to any electric consumer on request at no additional charge other than charges for required transmission, distribution, or ancillary services (CTC and Systems Benefits) from and after April 1, 1999.